



Evaluation of 23 CFR 772 for Opportunities to Establish Programmatic Agreements

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This Fact Sheet is intended to aid States in considering and implementing various strategies to meet the Federal Highway Administration's (FHWA) goal of expediting project delivery by promoting efficiency in the Highway Traffic Noise analysis process. This fact sheet identifies ways to:

- Establish programmatic agreements (PAs) between FHWA and state highway agencies (SHAs)

The Fact Sheet focuses on 23 CFR 772 and on its relationship with the National Environmental Policy Act (NEPA).

Programmatic Agreements (PA) are inter-agency agreements that establish a streamlined process for handling repetitive actions on a program rather than individual basis. PAs promote efficiency by:

- Specifying clear roles and responsibilities;
- Standardizing coordination and compliance procedures;
- Facilitating the development of greater trust relationships;
- Allowing limited staff and resources to be more focused and effective; and,
- Decreasing processing time while improving the predictability of *results*.

USING MITIGATION PLANS

Section 1311 of MAP-21 allows a SHA or an MPO to develop one or more programmatic plans to address the potential environmental impacts of future transportation projects. Plans may be developed on a regional or statewide basis.

Noise mitigation plans could show areas adjacent to highways that are not compatible with noise-sensitive development. Such noise mitigation plans could be used by local officials in their land use planning and development approval processes.

DEVELOPING AGREEMENTS WITH FEDERAL LANDS MANAGEMENT AGENCIES

An MOU between agencies with jurisdiction over Federal lands and FHWA on use of TNM for Federal Lands projects could clarify when TNM should be used, what Activity Categories apply to typical park uses or historic properties, how the number of impacts is estimated, and how to consider the aesthetic impacts of mitigation.

Such agreements are processed through the appropriate FHWA Division Office in consultation with FHWA Headquarters. SHAs can propose draft agreement language and reasons for the agreement.

SHAs are best equipped to evaluate their own policies and identify areas that could benefit from establishment of a standard process based on past experience with such actions.

Programmatic Agreement ideas and concepts typically originate with SHAs who then provide draft agreement language for FHWA Division and, if necessary, Headquarters review.

ESTABLISHING NOISE REEVALUATION AGREEMENTS

The FHWA NEPA regulation (23 CFR 771.129) requires FHWA to determine if NEPA documents and decisions remain valid after the environmental document has been approved. Changes, such as an alignment shift or a significant change in traffic projections, could change the noise study conclusions. Changes in noise policy or modeling software might also trigger the need to reevaluate a previously concluded noise study as a project moves into construction.

A noise reevaluation agreement would specify the conditions that would trigger the need to automatically update a noise study as part of the reevaluation process. This would minimize the project-by-project consultation requirements between the SHA and the FHWA Division Office.

Design-Build Project Contracts

The noise abatement commitments made during the NEPA process may be based on preliminary project plans that could change significantly during the design-build process and require a Reevaluation. Design changes could:

- Increase or decrease the number of impacts.
- Change the conclusions regarding the feasibility or reasonableness of noise abatement.

Specific language or line items should be included in the project bid package to require the contractor to reimburse the SHA for noise barrier items that are bid but then later removed from the project.

Decisions regarding who updates the noise study for the reevaluation should be clearly defined and must be consistent with 23 CFR 636 (Design Build Contracting) for design-build projects financed under 23 USC. Section 109 includes the following two conditions:

- 636.109 (b) (6): The design-builder must not prepare the NEPA document or have any decision-making responsibility with respect to the NEPA process.
- 636.109 (b) (7): Any consultants who prepare the NEPA document must be selected by and subject to the exclusive direction and control of the contracting agency.

PROACTIVELY RESEARCHING NOISE EFFECTS ON WILDLIFE

SHAs are more frequently receiving requests to study the effects of noise on wildlife, particularly for projects on or near undeveloped areas or projects involving underwater work. A PA between an SHA, FHWA and a resource management agency such as US Fish and Wildlife Service (USFWS), which discusses when and how the noise effects on wildlife should be addressed in the NEPA process, can be developed. Some SHAs have also conducted their own research, which may help inform development of a PA by others.

IMPLEMENTING NOISE MINIMIZATION STRATEGIES BEYOND 23 CFR 772

There may be opportunities on some projects to minimize noise impacts using measures that are not related to or required by the regulation or a SHA's noise policy. Measures can be implemented as part of a Context Sensitive Solution and might include things such as low-height berms and quieter pavements.

WSDOT has developed a publication titled, *"Noise Directive 2008: Improving the Noise Environment When Standard Options Aren't Available"*. This document describes situations in which enhanced community-scale shielding may be available for select projects involving roadway expansion.

PAs can also help meet the objectives of FHWA Initiatives:

- Planning and Environmental Linkages (PEL)
- Design-Build Project Delivery
- NEPA and Project Development
- Accelerating Project Delivery